

Introduction to American Politics

Week 4

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Overview

- ▶ Review cases
- ▶ Review sheet questions

Bill of Rights

The Bill of Rights

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against

himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Authority for Judicial Review: *Marbury v. Madison*

▶ Takeaways:

- ▶ This landmark case formed the basis for the exercise of judicial review in the US under Article III of the Constitution.
- ▶ The Supreme Court has the authority to review acts of Congress and determine whether they are unconstitutional and therefore void.
- ▶ It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each. If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.
- ▶ Congress cannot expand the scope of the Supreme Court's original jurisdiction beyond what is specified in Article III of the Constitution.

10th amendment (reserved powers and how it limits congress)

- ▶ Review: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'
- ▶ If the STATE is acting in a governmental role, the federal government may only prohibit state action, but may not impose affirmative duties on states
- ▶ *Printz v. US* comes in here!!! (back to the commerce clause)
- ▶ What happened here?

10th amendment and the commerce clause

Printz v. US

- ▶ **Facts:** Fed Brady Bill requires background checks before the sale or purchase of a gun. Two sheriffs sued to prevent the provision from being enforced.
- ▶ **Issue:** May Congress compel a state or local government to even temporarily implement and administer a federal regulatory program?
- ▶ **Reasoning:** Court reasoned that while the power to regulate gun sales might sound like it falls within the Commerce Clause (its a local commercial activity that has an impact on interstate commerce), Congress lacks the power to command a states' executive authorities to do anything.
- ▶ **Conclusion:** SCOTUS agreed that the provision was unconstitutional.
- ▶ **Held:** per the Tenth Amendment, Congress cannot constitutionally compel state executive branch officials to administer a federal regulatory program any more than it can compel the states themselves to enact, enforce, or administer a federal regulatory program, even if the act is only temporary or administrative and requires limited discretion.

Printz v. US Takeaway

- ▶ **Printz** implies that the 10th Amendment is an independent limitation on the commerce power.
- ▶ Congress can pass a statute prohibiting the sale of guns to individuals who don't pass a background check.
- ▶ However, in actuality, the federal statute does something more than require a test: it requires that local law enforcement assist.
- ▶ While the law is a valid execution of commerce power, the statute infringes on state sovereignty... so is unconstitutional.
- ▶ Court reads the Tenth Amendment as protecting state sovereignty.

Another state v. federal controversy: the right to bear arms

D.C. v. Heller

- ▶ **Facts:** This case deals with federal enclaves (a parcel of federal property within a state) and the individual's right to possess a firearm for traditionally lawful purposes, such as self-defense within the home. In this case, DC is a federal enclave and it has a ban on handguns, and prohibits them from being in the home unless they are disabled. Heller brings an action claiming that this complete ban violates the 2nd Amendment right to keep and bear arms. Heller is a special police officer authorized to carry a handgun while on duty, and applied for a registration for a handgun he wanted to keep at home and was denied.
- ▶ **Issue:** Does DC's prohibition on the possession of usable handguns in the home violate the 2nd Amendment?
- ▶ **Reasoning:** The court recognizes that the right to bear arms is not absolute, that some restrictions may be placed and that 'the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose' meaning there can be some regulations on bearing arms, such as banning felons from owning weapons, the mentally ill, and having registration requirements. However, since this law totally bans handguns in the home, that is not in keeping with the 2nd amendment since it leaves no option open to bear arms.
- ▶ **Held:** A complete ban on handgun possession in the home violates the 2nd Amendment, as does its prohibition against rendering any lawful firearm in the home inoperable for the purpose of immediate self-defense.

Right to privacy and Due Process

- ▶ The right to purchase and use contraceptives and the right to an abortion were argued in terms of a person's right to privacy and through due process.
- ▶ We read *Griswold v. Connecticut* for today and *Roe v. Wade* is covered for our midterm.
- ▶ So lets discuss *Griswold v. Connecticut* - and you guys will help brief it.

Griswold v. Connecticut: You guys brief it

- ▶ **Facts:** What were the facts of the case?
- ▶ **Issue:**
- ▶ **Reasoning:**
- ▶ **Held:**

Griswold v. Connecticut: You guys brief it

- ▶ **Facts:** CT statute made giving advice on contraception for purposes of preventing pregnancy a criminal offense. Planned Parenthood official and doctor charged under the statute, but object that it is unconstitutional. Court reasons that the Bill of Rights radiates **penumbras** (shadows of shadows), or implicit guarantees that shadow explicit rights and give them substance. Based on several amendments in the Constitution, Ct finds such a penumbral right to privacy.
- ▶ **Issue:** What was the issue in the case?
- ▶ **Reasoning:**
- ▶ **Held:**

Griswold v. Connecticut: You guys brief it

- ▶ **Issue:** Does the Constitution provide for a privacy right for married couples
- ▶ **Reasoning:** Court reasons that the Bill of Rights radiates penumbras (shadows of shadows), or implicit guarantees that shadow explicit rights and give them substance. Based on some Amends, Ct finds such a penumbral right to privacy. The right to privacy in marriage is not specifically protected in either the Bill of Rights or the Constitution. Nonetheless, it is a right so firmly rooted in tradition that its protection is mandated by various Constitutional Amendments, including the 1st, 9th and 14th Amendments.
- ▶ **Held:**

Griswold v. Connecticut: You guys brief it

- ▶ **Issue:** Does the Constitution provide for a privacy right for married couples
- ▶ **Reasoning:** Court reasons that the Bill of Rights radiates penumbras (shadows of shadows), or implicit guarantees that shadow explicit rights and give them substance. Based on some Amends, Ct finds such a penumbral right to privacy. The right to privacy in marriage is not specifically protected in either the Bill of Rights or the Constitution. Nonetheless, it is a right so firmly rooted in tradition that its protection is mandated by various Constitutional Amendments, including the 1st, 9th and 14th Amendments.
- ▶ **Held:** What was the holding/takeaway of the case?

Griswold v. Connecticut: You guys brief it

- ▶ **Held:** The First Amendment has a penumbra where privacy is protected from governmental intrusion, which although not expressly included in the Amendment, is necessary to make the express guarantees meaningful. The right to privacy in marital relations is fundamental and older than the bill of rights; it is sacred, and we do not want police in the bedroom looking for signs of contraceptives. Therefore, we apply Strict Scrutiny, and the state law is unconstitutional.

Right to contraceptives and abortions: Right to Privacy and Due Process

- ▶ The court has decided reproductive anatomy cases through both the right to privacy we just discussed in *Griswold* and through the Due Process Clause
- ▶ For the right to an abortion, the court changed the way it analyzed the cases.
 - ▶ *Roe v. Wade* was decided through the right to privacy
 - ▶ *Planned Parenthood v. Casey* was decided through the Due Process Clause.

Roe v. Wade: Expansive definition, right to privacy

- ▶ **Facts:** Roe, a single woman, wanted to get an abortion, but TX law made it illegal unless necessary to save the life of the mother.
- ▶ **Issue:** Do the Texas statutes improperly invade a right possessed by the appellant to terminate her pregnancy embodied in the concept of personal liberty contained in the sexual privacy protected by the Bill of Rights or its penumbras?
- ▶ **Reasoning:** Court acknowledged that a right of personal privacy, or a guarantee of certain areas or zones of privacy, exists under the Constitution. Ct. reasoned that right of privacy (whether based in 14th or 9th Am.) is broad enough to encompass a woman's decision whether or not to terminate her pregnancy, and that the state would impose detriment on the pregnant woman by denying her choice. Thus, the right to an abortion is fundamental, even if not absolute. Court determined that SS is the correct standard to apply to limitations on the availability of abortions.
- ▶ **Held:** the state's interest in potential life (the fetus) only becomes compelling at viability, when the baby is able to survive outside the womb (24-28 weeks).

Takeaways from Roe

- ▶ **First trimester:** abortion laws are unregulated
 - ▶ Decision must be left to the woman and her doctor
 - ▶ The state has an interest in maintaining medical standards, thus it can regulate that an abortion can only be performed by a physician, certain facilities, etc.
- ▶ **Second trimester:** abortion laws are more regulated
 - ▶ The state's interest in maternal health is sufficiently compelling to allow it to regulate abortion procedure in ways that are narrowly tailored to this interest.
- ▶ **Third trimester:** state can prohibit abortion
 - ▶ After viability, the state's compelling interest in potential life allows it to *prohibit* abortion unless abortion is necessary to save the mother's life.
- ▶ Critiques of Roe by pro-life advocates
 - ▶ You can always that a women's health will be at risk (aka Scalia: Roe stands for abortion on demand). Thus, Roe is too broad.

Planned Parenthood v. Casey: Narrower Definition, Due Process

- ▶ **Facts:** Planned Parenthood facially challenged PA's abortion law. The statute required (1) 24 hour waiting period by the woman seeking an abortion (2) parental notification; (3) husband notification, unless he is abusive, not the father or raped her and (4) a public report on all procedures to ensure compliance with the act.
- ▶ **Issue:** Does the spousal notification requirement place an undue burden on married women who seek abortions in violation of the United States Constitution?
- ▶ **Reasoning:** the Court deviated from, but did not overrule Roe, and articulated new test for abortion. Privacy is not mentioned in the opinion at all (first departure from Roe), but the opinion confirms that the constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause, which promises a realm of personal liberty that the government not enter.
- ▶ **Held:** A state can regulate and place restriction on abortion so long as those regulations do not impose an **undue burden** on the woman's ability to make the abortion decision
- ▶ **Takeaway:** This is a form of intermediate scrutiny, though an undefined test.

Exam Review

- ▶ Your exam will be comprised of 4 out of 6 explanatory T/F mini essays. Do not bring a scantron, but DO bring at least one exam blue book.
- ▶ The correct answer for each (T/F) will be worth 5 points; the explanation will be worth 20.
- ▶ Therefore, the exam is out of 100, with each mini-essay constituting 25 points.

- ▶ Ex: The U.S. Supreme Court has allowed for the extension of the power of the national government by broadly interpreting the commerce clause.

- ▶ True: Starting with the case of *Gibbons v. Ogden* (1824), and particularly during the 20th Century, the U.S. Supreme Court has determined that most every variety of manufacturing or trade has interstate or international implications (as, in the case of *Gibbons*, that shipping down a river to a harbor extended the path of commerce beyond the boundaries of New York state), and can therefore be regulated by national law under the commerce clause of the U.S. Constitution (Article I: Section 8). In the late 20th century, however, SCOTUS began to limit the extension of the commerce clause to allow the states more sovereignty over issues of public health and safety (e.g., *U.S. v. Lopez*, 1995). Although dealing with the carrying of guns, SCOTUS viewed the national law restricting the carrying of firearms in schools to be an encroachment by the U.S. Congress over the authority and jurisdiction of the states.

Exam Review

- ▶ Ex: In the case of *Gibbons v. Ogden* (1824), the U.S. Supreme Court established the judicial authority to determine actions of the U.S. Congress and the U.S. president as unconstitutional and therefore null and void.
- ▶ In *Gibbons*, SCOTUS broadly interpreted the commerce clause (Article I, section 8) to extend the power of the national congress. The judicial ability to declare acts of Congress and the president as unconstitutional was first established in the case of *Marbury v. Madison* (1803), when SCOTUS declared section 13 of the Federal Judiciary Act of 1789 as unconstitutional because it attempted to extend the original (not appellate) jurisdiction of the U.S. Supreme Court. (You should now elaborate on *Marbury*).

Practice questions mentioned in the study guide **from** **lecture**

- ▶ What is political power? How can it be exercised?
- ▶ What are the assumptions and goals of a democratic form of government (pure/ideal)? Why are minority rights compatible with democracy? Why might they conflict?
- ▶ What is the difference between majority rule and consensual democracy? What is the law of cyclical majorities (part of Arrows Paradox)?
- ▶ What is the importance of judicial interpretation (review all cases discussed in class, as well as the major ones discussed in the text, make sure you understand the difference between interpretation by intent and interpretation by experience) .

Practice questions mentioned in the study guide **from discussion**

- ▶ Why is the U.S. Constitution so limited in its coverage and vague in its language?
- ▶ What are the major institutional features of the Constitution (separation of powers, bicameralism, etc.)? What are they geared to allow for or prevent? Is the Constitutional design risk adverse? Make sure that you are reasonably familiar with the relevant Articles and Sections of the document (including the appended Bill of Rights).
- ▶ Explain how James Madison sought to cure the mischiefs of faction. Why did he prefer large republics to small democracies?
- ▶ Explain the logic of applying the 14th Amendment to equality of public education (Brown).
- ▶ What are the potential benefits of federalism? What are the potential problems (from section and class)?
- ▶ How has federalism changed over the last two hundred years? What are the causes of this change? How have the following court cases affected this change? (review McCulloch vs. Maryland, Gibbons vs. Ogden, U.S. vs. Lopez)
- ▶ What has been the court's position on the right to privacy? Make sure you understand the decision in the case of Griswold v. Ct. (1965) and its implications for Roe v Wade (1973).

Any questions?

- ▶ Your midterm will be next Thursday - in discussion.
- ▶ Bring a bluebook.